

DETAILED ACTION

1. The Amendment filed by Applicant on 06/04/2010 has been entered.
2. New claims 36-39 are added.
3. Claims 10-29, 33 and 35-39 are pending.
4. The rejection of claims 10-29, 33 and 35 under 35 U.S.C. 102(b) as being anticipated by Dang et al., U.S. Patent No. 6,677,395 (hereinafter "Dang") is withdrawn.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 10-29, 33 and 35-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dang et al., U.S. Patent No. 6,677,395 (hereinafter "Dang"). Dang teaches suitable olefin polymers useful as the irradiated and oxidized or non-irradiated and non-oxidized olefin polymers are propylene polymer materials, ethylene polymer materials, butane-1 polymer materials, and mixtures thereof. See Dang, col. 2, lines 40-44. Dang teaches a butene-1 polymer with a melt flow rate of 0.5 to 150. See Dang, col. 4, lines 31-53. Deng further teaches the use of additive in an amount of 9.0 to 85.0 wt. %.

8. The present invention differs from Deng in that the present invention requires ranges whereby the ranges disclosed in Deng are species of ranges disclosed in the present invention. For

example, the present invention requires 5 to 50% additive, melt flow rate between 100 to 1000 g/10 min, up to 30 mol% of olefinic comonomers and containing 85 wt. % propylene. Deng disclosed ranges that overlap with each and every claimed range limitation. Therefore, one of ordinary skill in the art would be motivated to select a point within the claimed ranges.

9. With respect to claim 35, the transitional phrase "consisting essentially of" limits the scope of a claim to the specified materials or steps "and those that do not materially affect the basic and novel characteristic(s)" of the claimed invention. In *re Herz*, 537 F.2d 549, 551-52, 190 USPQ 461, 463 (CCPA 1976). For the purposes of searching for and applying prior art under 35 U.S.C. 102 and 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" will be construed as equivalent to "comprising." If an applicant contends that additional steps or materials in the prior art are excluded by the recitation of "consisting essentially of," applicant has the burden of showing that the introduction of additional steps or components would materially change the characteristics of applicant's invention. In *re De Lajarte*, 337

F.2d 870, 143 USPQ 256 (CCPA 1964). Thus, claims 10-29, 33 and 35-39 is unpatentable over Dang.

10. The Applicants argues that there are no examples showing mixtures of polypropylene and polybutene, or examples of mixtures of different non-irradiated materials having different carbon numbers or butene-1 as a majority component. Patents are relevant for all they contain. Dang teaches suitable olefin polymers useful as the irradiated and oxidized or non-irradiated and non-oxidized olefin polymers are propylene polymer materials, ethylene polymer materials, butane-1 polymer materials, and mixtures thereof. See Dang, col. 2, lines 40-44. Dang teaches a butene-1 polymer with a melt flow rate of 0.5 to 150. See Dang, col. 4, lines 31-53.

11. The Applicant further argues that the non-irradiated polymer materials are not dispersants, but the medium which the additives (the actual dispersants) are to be dispersed. The Applicant argues outside the scope of the claims for the dispersion properties of the polymeric composition are not claimed.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

13. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT HARLAN whose telephone number is (571)272-1102. The examiner can normally be reached on Mon-Thu, 10 AM - 8 PM.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David W. Wu can be reached on (571) 273-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert D. Harlan/
Primary Examiner
Art Unit 1762

rdh